

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WAYMON MICKIANGELO BERRY, III.

Petitioner,

No. CIV S-03-0631 GEB DAD P

vs.

MICHAEL E. KNOWLES, et al.,

Respondents.

ORDER

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Petitioner is a state prisoner proceeding pro se with an appeal of this court's May 19, 2005 denial of his application for a writ of habeas corpus. Petitioner challenges a 2001 disciplinary decision finding him guilty of disrespect while incarcerated at Mule Creek State Prison. On August 1, 2005, the U.S. Court of Appeals for the Ninth Circuit remanded this case for the limited purpose of granting or denying a certificate of appealability.

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial

1 showing of the denial of a constitutional right." 28 U.S.C.
2 § 2253(c)(2). A prisoner satisfies this standard by
3 demonstrating that reasonable jurists would find that his
4 constitutional claims are debatable and that any dispositive
5 procedural rulings by the district court are also debatable or
6 wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack
7 v. McDaniel, 529 U.S. 473, 484 (2000). The court must either
8 issue a certificate of appealability indicating which issues
9 satisfy the required showing or must state the reasons why such a
10 certificate should not issue. Fed. R. App. P. 22(b).

11 For the reasons set forth in the magistrate judge's
12 March 28, 2005 findings and recommendations, petitioner has not
13 made a substantial showing of the denial of a constitutional
14 right. Accordingly, a certificate of appealability should not
15 issue in this action.

16 IT IS SO ORDERED.

17 Dated: August 8, 2005

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19 /s/ Garland E. Burrell, Jr.
20 GARLAND E. BURRELL, JR.
21 United States District Judge
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